

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

ORDER

On August 31, 2023, the United States Magistrate Judge's Order, Memorandum Opinion and Recommendation ("Recommendation") was filed and notice was served on the parties pursuant to 28 U.S.C. § 636. (Docs. 129, 130.) In the Recommendation, the Magistrate Judge recommends granting Nurse McKenzie's motion for summary judgment, granting Defendant SHP's motion for summary judgment, granting HCDC Defendants' motion for summary judgment, denying Plaintiff's cross motions for summary judgment, and that summary judgment be entered in favor of Defendant Nakia Williams. Plaintiff filed objections to the Order, Memorandum Opinion and Recommendation. (Doc. 131.)

This court is required to "make a de novo determination of those portions of the [Magistrate Judge's] report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). This court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the [M]agistrate [J]udge or recommit the matter to the [M]agistrate [J]udge with instructions."

This court has appropriately reviewed the Recommendation and Plaintiff's objections and has made a de novo determination which is in accord with the Magistrate Judge's Recommendation. This court therefore adopts the Recommendation.

IT IS THEREFORE ORDERED that the Magistrate Judge's Recommendation, (Doc. 129), is **ADOPTED**.¹ **IT IS FURTHER ORDERED** that Defendant Kathryn McKenzie's Motion for Summary Judgment, (Doc. 80), is **GRANTED**, that Defendant Southern Health Partners, Inc.'s Motion for Summary Judgment, (Doc. 81), is **GRANTED**, that Defendants Hoke County, Sheriff Hubert Peterkin, and Nachia

¹ The Recommendation includes an analysis of the admissibility of Nurse McKenzie's statements in her affidavit as to Dr. Inman's order to substitute for the Pataday eyedrops under Fed. R. Evid. 803(4) and 803(6). (Doc. 129 at 32-33.) In addition to that analysis, this court finds that Fed. R. Civ. P. 56(c)(2) allows an objection if the material "cannot be presented in a form that would be admissible evidence." Even if there is a hearsay concern with respect to the verbal order Dr. Inman gave Nurse McKenzie, that evidence can readily be presented in admissible form through the testimony of Dr. Inman and Nurse McKenzie.

Revels's Motion for Summary Judgment, (Doc. 85), is **GRANTED**, and that Plaintiff Robert Lewis's² Cross Motions for Summary Judgment, (Docs. 102, 104, 106), are **DENIED**.

IT IS FURTHER ORDERED that summary judgment is entered in favor of Defendant Nakia Williams.

A Judgment dismissing this action will be filed contemporaneously with this Order.

This the 28th day of September, 2023.



United States District Judge

² A typographical error in Plaintiff's name, found on page 40, paragraph 3 of the United States Magistrate Judge's Order, Memorandum Opinion and Recommendation, (Doc. 129), has been corrected in this Order and in the Judgment filed contemporaneously herewith.